

This chapter contains updates on prior recommendations made by the Independent Police Auditor (IPA). The IPA tracks all prior and pending recommendations until a final resolution to each recommendation is reached. In addition, random audits to measure compliance with prior recommendations are also reported in this section. For example, the IPA has reported annually on the issue of citizens filing complaints because they allege that officers refused to provide identification when asked. The number of recurring complaints alleging an officer's failure to provide identification is analyzed and if necessary, new recommendations to minimize or eliminate the cause of the complaints are made.

MEDIATION PROGRAM

As a part of the new issue section of last year's annual report, the IPA recommended a voluntary mediation program for implementation by the San José Police Department (SJPD). On April 8, 2000, the City Council approved the recommendation and response from the San José Police Department to study the feasibility of implementing a

mediation program. The IPA envisioned that the proposed mediation program would be an alternative to the formal complaint investigation process that would allow the complainant and the subject officer to engage in meaningful dialogue.

The current IPA model employed by the City of San José does not provide or allow for citizen-officer interaction once the complaint has been filed. It was the IPA's belief that through the creation of a voluntary mediation program, the citizen would have the ability to access a process that would allow them to get an answer to a question or a clarification to a concern. This type of sentiment is not uncommon as noted in a report issued by the City of Portland, Police and Citizen's Talking (PACT). In that report a Portland mother is quoted as saying "I don't want the officer disciplined. I want a conversation."¹ Often the citizen is only seeking an opportunity to be heard and a chance to hear the response first hand from the officer.

In response to the IPA's recommendation, the San José Police Department

1 Draft report, City of Portland, Office of Neighborhood Associations, Neighborhood Mediation Center, April 18, 1997

agreed that the proposed mediation program could be a viable option for both the citizen and the police officer. The Chief of Police assigned the Internal Affairs Unit to research the feasibility of developing such a program and to submit a report with findings and recommendations.

The IPA recognizes that it is not uncommon for a police association to have strong opposition to a mediation process because of a belief that participation may imply guilt by the subject officer. There may also be a fear that a complainant who is dissatisfied with the outcome of mediation would have the option of filing a complaint through the formal process anyway.

Some of these concerns were anticipated when the recommendation was made to implement a mediation program. It is a belief by the IPA that a mediation process that is fair and equitable to all concerned can be designed and implemented. At this point the IPA suggests that when the SJPD conducts its feasibility study, it considers both perspectives, that of the police officer and the citizen in determining whether an existing

mediation program can be effectively implemented.

UPDATE

The feasibility study was conducted and completed by the San José Police Department (SJPD). The SJPD is committed to designing a voluntary mediation program that will be beneficial to both complainants and officers. To that end, members of the SJPD have participated in meetings with the IPA and members from the Judicial Arbitration and Mediation Services (JAMS), in particular with retired Judge John A. Flaherty. JAMS has agreed to work with the IPA and the SJPD to launch a pilot program wherein members from JAMS will act as mediators. In order to instill confidence in this new mediation program, the choice of mediators is very important and must come from a group such as JAMS whose members are held in high esteem by citizens and police officers. It is anticipated that the San José Police Department Mediation Program will become operational in the 2001 calendar year.

CITIZEN REQUEST FOR OFFICER IDENTIFICATION

In the IPA 1997 Year End Report, the issue of officer identification was raised for the first time. At that time, the IPA expressed concern that a number of complainants were alleging that officers were failing to properly identify themselves when asked to do so. The IPA recommended that the SJPD should develop a policy to direct officers to properly identify themselves, preferably in writing when requested by a citizen. Upon adoption of this recommendation in 1998, the SJPD modified an existing form (incident card) for use by the officers in the field and issued a directive found in the Duty Manual that outlines the use of the card.

Even though the SJPD has made an effort to address the identification issue by placing a directive in the Duty Manual, stronger measures must be taken to assure compliance by the officers. In the year 2000, the IPA audited 18 cases where the issue of officer identification was alleged. Nine of these cases were handled informally or without requiring a full investigation. In the remainder of the cases, the allegation was part of a Formal

complaint, and in most cases the identification allegation was handled in the scope of the investigation. Of the 18 cases, two were sustained.

An analysis of these cases indicates that there are varied allegations of how officers failed to identify themselves, as the department directive included in the Duty Manual requires. These allegations include the following types of situations: officers who refused to identify themselves; officers who refused to provide a pen or pencil to the complainant; officers who issued complainants a citation in retaliation for the complainant requesting the identification of the officer; and officers who have been rude by suggesting that the complainant must not be able to read since their badges are visible. In each situation, it has been alleged that the officer had failed to provide them with written identification information as the Duty Manual requires.

Although this seems to be a recurring problem that requires constant attention, the fact that many of the cases are being handled informally rather than through a formal investigation may be exacerbating the problem by minimizing the importance of the directive in the

Duty Manual. The issuance of an “Incident Card” in response to a request from a member of the public should be provided without delay. Officers should seek to minimize conflict in these situations by promptly providing their name and badge number. This is the type of complaint that should become obsolete. The IPA will continue to monitor this issue and will look for consistency in classifying this type of complaint in the future.

RECOMMENDATION

The San José Police Department’s Internal Affairs Unit should formally investigate allegations of officers refusing to identify him/herself under an Improper Procedure allegation.

OFFICER-INVOLVED SHOOTINGS

In the Independent Police Auditor 1998 Year End Report, the IPA recommended that its jurisdiction be expanded to include the review of police shootings whether or not a complaint was filed. The IPA requested that all officer-involved shootings resulting in injury or death be subjected to review by the IPA. In July of 1999, the Chief of Police,

in response to the IPA’s recommendation, established a process to review officer involved shootings. The purpose of this review process was to review all officer-involved shootings to determine if any training needs exist or if any changes need to be made to a current police policy or procedure. The Chief called this review process the San José Police Department Officer-Involved Shooting Incident Training Review Panel, see Appendix S.

The members of this panel include the Chief of Police, the Deputy Chief for the Bureau of Field Operations, the Independent Police Auditor, the Training Unit Commander, and a representative from the City Attorney’s Office. Once the panel comes together to review an incident, the SJPD Homicide Unit, which is responsible for investigating all officer-involved shootings that result in injury or death, provides the review panel with an oral and PowerPoint presentation. The review panel then considers all the information provided and makes recommendations that can lead to the adoption of a new training plan or a change/development of a policy or procedure.

In the 1999 calendar year, San José Police Department officers were involved in eight shootings, seven of which resulted in a fatal wound to the suspect. Although the review panel was created in August of 1999, the Shooting Review Panel was able to review seven of the eight officer-involved shootings. One shooting incident was still pending Grand Jury review; therefore it was not reviewed until the year 2000. As a member of the review panel, the Independent Police Auditor participated in all shooting reviews and provided input as necessary. Whenever possible, the police auditor reviews the investigative files prior to attending the meetings of the Shooting Review Panel.

ANALYSIS

In the year 2000, there were a total of

five officer-involved shooting incidents involving San José Police Department officers. The Shooting Review Panel examined these incidents. Three out of the five shootings resulted in fatal injuries to the person shot. Two of the fatalities resulted from gunshot wounds to the chest and one to the head. These figures show a decrease from 1999's figures of eight shootings, in which seven were fatalities. Although the incident count is lower, there are still some issues to consider. One issue to consider is that the percentage of fatalities compared to shootings was at 87.5% in 1999 and decreased to 60% in 2000. Although the percentage has decreased, we still need to look at what can be done to decrease that percentage further. Another issue to consider is that two out of the five suspects were armed with a weapon other than a firearm. For these types of cases,

officers should have other alternatives to lethal force. A third issue to consider is that out of the five incidents, two of the people shot had a history of mental illness. One question that arises is whether police officers are adequately trained to deal with mentally ill and combative suspects. Another factor is that four out of the five suspects were minorities. This is an important factor to consider as to whether a language barrier between the officer and the suspect could have led to the shooting.

FATALITIES

In 1999, of the eight officer-involved shootings, seven resulted in fatal wounds. In 2000, the number of officer-involved shootings decreased to five, which included three that resulted in fatal wounds. Two issues to examine include the following: The first issue is,

Illustration A: Officer-Involved Shooting Cases

*Crisis Intervention Team (CIT): A select squad of patrol officers who will respond immediately to emergencies exclusively involving potential encounters with mentally ill people.

whether some of the fatalities could have been avoided if less lethal weapons were available or used. In only one out of the five shootings was a less lethal weapon deployed before the officers' guns were discharged. In the one incident where a less lethal weapon, a stunbag gun, was deployed, it proved to be ineffective. The officer had to fire his gun subsequently.

The second issue to look into is the placement of the gunshot wounds on the body. Of the three fatalities, two suffered wounds to the chest and one to the head. The two who were not fatally wounded, one received wounds on his leg and flank, and the other one received wounds on his upper torso. Should officers always shoot to kill, or can they shoot to disable? This is a frequently asked question by the public. Officer involved shootings happen very quickly, and are usually split second decisions. Officers are trained to shoot to stop the threat to themselves or others. People do not remain stationary targets therefore; aiming for the outer extremities is extremely difficult and can increase the risk to the officer and to others.

SUSPECTS ARMED WITH WEAPONS

Out of the five officer-involved shootings in the Year 2000, three of the suspects were armed with firearms, and two of them were armed with non-automatic propulsion weapons. One had a homemade spear, and the other had an axe and a knife. The latter was fatally wounded. When suspects are not armed with a firearm, officers may have an opportunity to use alternatives other than shooting if they are not in imminent danger.

In these situations, it is important to have less lethal weapons readily available. Retreat is not legally required but is an alternative in cases where officers need time to reassess the situation. In two out of the five shootings, the suspects shot at the officers. The officers returned fire inflicting fatal wounds to the suspect in one incident and non fatal injuries in the other.

SUSPECTS WITH MENTAL ILLNESS HISTORIES

Two of the five suspects in Year 2000 officer-involved shootings had mental illness histories. That is a 40% ratio.

Officers who are used to dealing with suspects who wantonly break the law may not be capable of detecting suspects who do not have the mental capacity to know that they are breaking the law. Suspects with mental illness may be more prone to ignore, not understand, or resist officers' orders. All officers need to be trained to recognize symptoms of whether a suspect may be mentally ill. The SJPD is making great inroads in providing this type of training to its officers.

LANGUAGE BARRIERS

Four out of the five suspects were minorities. Two were Hispanic, one Vietnamese, and one Chinese. Their level of understanding and fluency in the English language at the time of the shooting is unknown. If a language barrier existed, this would have made an already tense situation even worse. How does an officer handle a situation when they encounter a suspect who only speaks a language other than the ones the officer speaks? Although many officers are bilingual or maybe even multi-lingual, there may still be situations where a shooting may have been avoided if language was not a barrier. In one case, prior to the

shooting, the suspect indicated to the officers that he did not speak English. It is unknown what role, if any, this played in the final outcome. San José is a city where minority populations are now the majority. San José has large populations who only speak Spanish or Vietnamese. The San José Police Department must have contingencies in place to address this growing need.

CONCLUSION

An analysis of the officer involved shootings in 2000 raised more questions than provided answers. However, there was a marked improvement from 1999. The number of officer-involved shootings declined to five from eight. The ratio of fatalities compared to shooting incidents also declined, from 87.5% in 1999 to 60% in 2000. Although the number of shootings has decreased, there are still areas that can be improved upon.

RECOMMENDATIONS

1. Continue to identify alternate, less lethal weapons and make them more readily accessible
2. Provide specialized training in handling suspects armed with non-automatic projectile weapons.
3. The Critical Incident Response Team's presence at the scene is very important. Continue to provide special training in identifying and handling suspects with mental illness histories.
4. Continue to recruit and hire officers with bi-lingual skills.